# Exhibit A

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

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| IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION | § § § § § § § § | MDL DOCKET NO. _____ |

**DEFENDANTS' MOTION FOR TRANSFER OF ACTIONS TO THE NORTHERN DISTRICT OF ILLINOIS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Pursuant to 28 U.S.C. § 1407 and Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Defendants IKO Manufacturing, Inc., IKO Chicago, Inc. and IKO Pacific, Inc. ("IKO") hereby respectfully move the Judicial Panel on Multidistrict Litigation for an order: (a) transferring all virtually identical class actions regarding IKO roofing shingles, pending before various different federal district courts, as well as any cases that may subsequently be filed asserting similar or related claims, to a single district court, and (b) consolidating those actions for coordinated pretrial proceedings. Defendants respectfully request that the Panel transfer the actions to the United States District Court for the Northern District of Illinois, Eastern Division. In support of the transfer and consolidation of the actions, Defendants aver the following, as set forth more fully in the accompanying supporting Memorandum:

1. IKO Manufacturing, Inc., IKO Chicago, Inc., and IKO Pacific, Inc., related U.S. entities, are defendants in three actions: *Pamela D. McNeil et al. v. IKO Manufacturing, Inc. et al.*, Civil No. 1:09-cv-04443, pending before Judge Samuel Der-Yeghiayan in the United States District Court for the Northern District of Illinois (the "Illinois Action"); *Gerald P. Czuba et al. v. IKO Manufacturing, Inc. et al.*, Civil No. 09-CV-0409, pending before Judge William M.

Skretny in the United States District Court for the Western District of New York (the "New York Action"); and *Hight et al. v. IKO Manufacturing, Inc. et al.*, Civil No. 2:09-CV-00887-RSM, pending before Judge Ricardo S. Martinez in the United States District Court for the Western District of Washington (the "Washington Action"). A copy of Plaintiffs' Complaint in the Illinois Action is attached as "Attachment A" to the accompanying Memorandum, a copy of Plaintiffs' Amended Complaint in the New York Action is attached as "Attachment C" to the accompanying Memorandum, and a copy of Plaintiffs' Complaint in the Washington Action is attached as "Attachment D" to the accompanying Memorandum.

2. IKO, Manufacturing, Inc. is the sole defendant in *Debra Zanetti et al. v. IKO Manufacturing, Inc.*, Civil No. 2:09-CV-2017, pending before Judge Dickinson R. Debevoise in the United States District Court for the District of New Jersey (the "New Jersey Action"). A copy of Plaintiffs' Complaint in the New Jersey Action is attached as "Attachment B" to the accompanying Memorandum.

3. As required by 28 U.S.C. § 1407(a), and as set forth in detail in the accompanying Memorandum, the cases proposed for transfer and consolidation "involve one or more common questions of fact." The complaints contain virtually identical factual allegations with respect to the allegedly defective roofing shingles manufactured by Defendants, and premise recovery upon similar theories of liability. The prayer for relief is identical across all of the actions.

4. The proposed transfer and consolidation of these products liability class actions "will be for the convenience of parties and witnesses and will promote the just and efficient conduct" of these actions. 28 U.S.C. § 1407(a). Consolidation will also eliminate the risk of inadvertent and potentially problematic inconsistent rulings on pretrial motions as may occur if the related actions remain uncoordinated and pending before a number of different courts.

Consequently, the savings in time and expense that will result from consolidation will benefit Plaintiffs, Defendants and the judicial system.

5. Defendants respectfully request that this Panel grant their request to transfer and consolidate all related actions listed in the accompanying Schedule of Actions in the Northern District of Illinois because much of the documentary and testimonial evidence relevant to the common factual issues is located in or near Chicago, and because it is the most geographically central, convenient and accessible location for all of the parties.

6. This Motion is based on the Memorandum filed by Defendants in support of this Motion, the pleadings and papers on file herein, and such other matters as may be presented to the Panel at the time of any hearing.[1]

Dated: August 6, 2009

Respectfully submitted,

By: _____

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[1] Pursuant to Rule 5.2(b) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Defendants have simultaneously delivered copies of this Motion to the Clerk of each district court in which the related actions are pending.

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

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| IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION | § § § § § § § § § | MDL DOCKET NO._____ |

**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions and this Proof of Service was served by First Class Mail on August 6, 2009 to the following:

**Clerks of the Courts where Actions are Pending**

Clerk of the Court
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604

Clerk of the Court
United States District Court for the District of New Jersey
50 Walnut Street
Newark, NJ 07101

Clerk of the Court
United States District Court for the Western District of New York
68 Court Street
Buffalo, NY 14202

Clerk of the Court
United States District Court for the Western District of Washington
700 Stewart Street
Seattle, WA 98101

**Pamela D. McNeil and James K. Cantwil v. IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Sales, Ltd., IKO Pacific, Inc., and IKO Chicago, Inc.; N.D. Ill., No. 1:09-cv-04443**

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**Michael Hight and Michael Augustine v. IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Sales, Ltd., IKO Pacific, Inc., and IKO Chicago, Inc.; W.D. Wash., 2:09-cv-00887**

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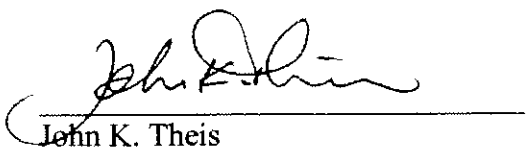

John K. Theis

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION

§ § § § § § § §

MDL DOCKET NO. _____

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR TRANSFER TO THE NORTHERN DISTRICT OF ILLINOIS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

## PRELIMINARY STATEMENT

Defendants IKO Manufacturing Inc., IKO Chicago Inc. and IKO Pacific Inc. ("IKO") hereby submit this memorandum of law in support of their motion pursuant to 28 U.S.C. § 1407 to: (a) transfer the four virtually identical putative class actions listed in the Schedule of Actions filed herewith, as well as any cases that may subsequently be filed asserting similar or related claims, to the United States District Court for the Northern District of Illinois, Eastern Division, and (b) consolidate the actions for pretrial proceedings. Movants and Plaintiffs agree that, because the actions all revolve around the common issue of the durability of IKO roofing shingles, transfer and consolidation of these actions to a single court will benefit all parties by eliminating duplicative discovery, and will conserve the resources of the judiciary, the parties and their counsel. Defendants contend that consolidation of these widely dispersed national actions in the Northern District of Illinois, to which many of the relevant witnesses and documents lay in close proximity, will provide a convenient and centralized metropolitan location for pretrial proceedings.

## BACKGROUND

The four actions currently pending are: *McNeil et al. v. IKO Manufacturing Inc. et al.*, Civil No. 1:09-cv-04443 (N.D. Ill. filed July 24, 2009) (pending before Judge Samuel Der-Yeghiayan) ("the Illinois Action") (Complaint attached hereto as Attachment A);[1] *Zanetti et al. v. IKO Manufacturing Inc.*, Civil No. 2:09-CV-2017 (D.N.J. filed Apr. 29, 2009) (pending before Judge Dickinson R. Debevoise) ("the New Jersey Action") (Amended Complaint attached hereto as Attachment B); *Czuba et al. v. IKO Manufacturing Inc. et al.*, Civil No. 09-CV-0409 (W.D.N.Y. filed Apr. 29, 2009) (pending before Judge William M. Skretny) ("the New York Action") (Amended Complaint attached hereto as Attachment C); and *Hight et al. v. IKO Manufacturing Inc. et al.*, Civil No. 2:09-CV-00887-RSM (W.D. Wash. filed June 26, 2009) (pending before Judge Ricardo S. Martinez) ("the Washington Action") (Complaint attached hereto as Attachment D).[2] This motion is brought on behalf of Defendants IKO Manufacturing Inc., IKO Chicago Inc. and IKO Pacific Inc.[3] In the New Jersey Action, only IKO Manufacturing Inc. has been named as a defendant; in the remaining actions, IKO Chicago, IKO Pacific and IKO Manufacturing have all been named as defendants. Plaintiffs in the actions claim to be homeowners whose houses were allegedly equipped with IKO roofing shingles over the last thirty years.

In their complaints, all Plaintiffs allege an identical grievance using effectively the same language: that roofing shingles manufactured by Defendants and installed on homes purchased by Plaintiffs gradually deteriorated over time. As a result of that deterioration, the complaints

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[1] On April 30, 2009, Plaintiffs filed a Class Action Complaint in the Central District of Illinois. Plaintiffs voluntarily dismissed that action on July 22, 2009 and refiled a Class Action Complaint in the Northern District of Illinois on July 24, 2009.

[2] The docket reports for each individual action are attached hereto as Attachment E.

[3] Plaintiffs have also listed two Canadian entities, IKO Sales Ltd. and IKO Industries Ltd., as defendants in three of the actions. Those defendants have not yet been served and are not parties to this motion.

allege, Plaintiffs received a product that did not conform to the product promised to them and suffered damage to their homes. Plaintiffs seek to certify classes of consumers who purchased homes on which IKO shingles were installed since 1979. The Illinois Action seeks to certify classes of homeowners in Michigan; the New Jersey Action, homeowners in New Jersey; the New York Action, homeowners in New York; and the Washington Action, homeowners throughout the United States. Each complaint alleges similar legal theories, sounding in negligence, products liability, breach of contract, breach of express and implied warranties, unjust enrichment, fraudulent inducement and consumer fraud.[4] Plaintiffs seek judgment against Defendants and an award of injunctive relief, damages and costs. There have been no answers to the complaints, no substantive motions, no discovery and no significant pretrial activities in any of the actions.

The Northern District of Illinois, the forum of the Illinois Action and the home of defendant IKO Chicago, Inc., is the appropriate transferee forum for these MDL proceedings. A substantial portion of the shingles that are the subject of the actions were manufactured in facilities located in either Chicago, Illinois or nearby Kankakee, Illinois. Further, all customer complaints and warranty claims for shingles sold in the United States are processed by a facility located in either Chicago or Kankakee. In addition, marketing for IKO shingles sold in the United States has been managed by offices located in either Chicago or Kankakee. Finally, both the president and chief financial officer for IKO's shingle operations in the United States have been located in the Chicago or Kankakee offices. *See* Declaration of David Koschitzky, contained in Attachment F.

[4] In the Washington Action, the Plaintiffs' theories of recovery are actionable misrepresentation, violation of Washington's Products Liability Act, RCW §§ 7.72 *et seq.*, breach of express warranty, violation of Washington's Consumer Protection Act, RCW §§ 19.86 *et seq.*, and unjust enrichment.

## ARGUMENT

### I. The Actions Should Be Transferred and Consolidated for Pretrial Proceedings

Actions that involve common questions of fact may be transferred and consolidated under section 1407 in order to "serve the convenience of parties and witnesses" and to "promote the just and efficient conduct of such actions." 28 U.S.C. § 1407. The purpose of transfer by the Judicial Panel on Multidistrict Litigation ("Panel") is to (1) eliminate duplicative discovery, (2) avoid conflicting rulings and schedules, (3) reduce litigation costs, and (4) conserve the time and effort of the parties, attorneys, witnesses and courts. *Manual for Complex Litigation (Fourth)* § 20.131 (2004) (citing *In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968)). *See In re Gadolinium Contrast Dyes Prods. Liab. Litig.*, 536 F. Supp. 2d 1380, 1381 (J.P.M.L. 2008) (holding centralization "necessary in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary").

The actions described above, which are all premised on virtually identical factual allegations and nearly facsimile complaints, present ideal candidates for pretrial consolidation. Indeed, without consolidation, the important objectives and advantages of the multidistrict litigation rules would be defeated. Plaintiffs in these actions agree that pretrial consolidation would be appropriate and desirable.

#### A. The Actions Present Common Factual Allegations

Actions that share "common questions of fact" should be consolidated for pretrial proceedings. *See, e.g., In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Prods. Liab. Litig.*, 598 F. Supp. 2d 1372, 1373 (J.P.M.L. 2009) (ordering consolidation of cases involving an allegation of a "common defect" in an engine because each action alleged that the engine's

defective design caused it to gradually malfunction). Actions whose factual allegations are virtually identical pose a high probability of overlapping discovery, as well as of duplicative "discovery disputes, dispositive motions, and issues relating to experts." *Id.*

It follows that, absent consolidation, the actions in the present case, whose complaints mirror one another almost verbatim, would undoubtedly involve the possibility of duplicative discovery, inefficiency and inconsistent pretrial rulings. Despite a few minor differences, the factual and class allegations in the Illinois Complaint, ¶¶ 1–10, 22–29, the New Jersey Amended Complaint, ¶¶ 1–14, 22–30, the New York Amended Complaint, ¶¶ 4–13, 26–33, and the Washington Complaint, ¶¶ 5.1–5.14, 7.2–7.8, are indistinguishable.[5] The descriptions of the named plaintiffs are duplicative.[6] The class definitions proposed in each complaint are, other than the substitution of the particular geographic area, identical.[7] In specifying the questions of fact and law common to all class members, plaintiffs in each action provide a verbatim list, including the question: "Whether the Shingles are defective in that they are subject to moisture penetration, cracking, curling, blistering, blowing off the roof, prematurely failing, and are not suitable for use as an exterior roofing product for the length of time advertised, marketed, and

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[5] *Compare, e.g.*, Illinois Compl. ¶ 5 ("IKO has consistently represented to consumers that it is 'Setting the Standard' for 'quality, durability, and innovation.' Defendants have not lived up to that promise."), *with* New Jersey Am. Compl. ¶ 9 ("IKO has consistently represented to consumers that it is 'Setting the Standard' for 'quality, durability, and innovation.' Defendant has not lived up to that promise."), New York Am. Compl. ¶ 8 ("IKO has consistently represented to consumers that it is 'Setting the Standard' for ' quality, durability, and innovation.' Defendant has not lived up to that promise."), *and* Washington Am. Compl. ¶¶ 5.5–56 ("[IKO] describes its warranty as 'IRON CLAD' and claims it is 'Setting the Standard' for 'quality, durability, and innovation.' But IKO's Shingles have not lived up to that promise.").

[6] *See, e.g.*, Illinois Compl. ¶ 11 ("Ms. McNeil purchased a new home outfitted with IKO Shingles in approximately 2001. She first became aware of the problem with her shingles in approximately 2005 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before Plaintiff filed this Complaint."); New York Am. Compl. ¶ 14 ("Mr. Czuba purchased a new home outfitted with IKO Shingles in approximately 1997. He first became aware of the problem with his shingles in approximately 2006 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before he filed this Complaint."). *See also* New Jersey Am. Compl. ¶ 15; Washington Compl. ¶ 2.1.

[7] *See* Illinois Am. Compl. ¶ 21; New Jersey Am. Compl. ¶ 21; New York Am. Compl. ¶ 25; Washington Compl. ¶ 7.1.

warranted."[8] Thus, it is plain that substantial overlap exists among the allegations contained in the complaints.

### B. Transfer Will Serve the Convenience of Parties and Witnesses and Promote the Just and Efficient Conduct of the Actions

Transfer of these cases will also achieve the objectives of convenience and efficiency mandated by § 1407. First, transfer and consolidation is convenient to the parties and the witnesses because discovery issues in the cases will coincide significantly. *See In re Chrysler LLC*, 598 F. Supp. 2d at 1373. The factual allegations, technical underpinnings and theories of recovery of each action are similar, if not identical. Thus, the parties will certainly seek many of the same documents and information. This may include, among other things, information concerning warranties, product tests and evaluations, documentation of quality control, customer complaints and industry standards, and expert testimony regarding shingle technology, manufacture and lifespan. In a prior case, the Panel consolidated several products liability actions premised upon allegations of defective roofing shingles similar to the allegations advanced in the present actions. *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 474 F. Supp. 2d 1357 (J.P.M.L. 2007). Similar to the present actions, the plaintiffs in *In re Certainteed Corp.* brought:

> overlapping putative class actions . . . on behalf of owners of buildings with allegedly defective roofing shingles manufactured, warranted, and distributed by CertainTeed . . . [,] assert[ing] claims of negligence and products liability, among other causes of action, arising from the affected roofing shingles and the resultant property damage alleged.

*Id.* at 1358. According to the Panel, centralization of the *CertainTeed* actions was necessary in order to conserve resources and to avoid inconsistent pretrial rulings. *Id.* As in *CertainTeed*,

[8] Illinois Am. Compl. ¶ 24a; New Jersey Am. Compl. ¶ 24a; New York Am. Compl. ¶ 28a. *See* Washington Compl. ¶ 7.5.1 ("Whether IKO Shingles are defective in that they fail prematurely and are not suitable for use as an exterior roofing product for the length of time advertised, marketed and warranted[.]").

centralization is necessary to converve resources and to avoid inconsistent pretrial rulings. Further, without consolidation, many witnesses will be forced to undergo multiple depositions, and the parties will be forced to produce voluminous documents multiple times, answer overlapping interrogatories, and possibly engage in identical discovery disputes.

Second, given the overlap of parties, the near identity of factual allegations, the substantial overlap of legal issues and the likelihood that the same documents and testimony will be relevant to all of the actions, consolidation will conserve judicial resources and prevent inconsistent rulings. *See In re Mentor Corp. Obtape Transobturator Sling Prods. Liab. Litig.*, 588 F. Supp. 2d 1374, 1375 (J.P.M.L. 2008) [hereinafter *In re Mentor Corp.*] (stating that centralization of such an action would "minimize[] the risk of duplication or inconsistency and . . . thereby lead[] to the just and expeditious resolution of all actions to the overall benefit of those involved." (internal quotations omitted)). Plaintiffs in the Illinois, New Jersey and New York Actions seek to certify classes of plaintiff homeowners defined identically but for the state of residence of each class, and Plaintiffs in the Washington Action seek to certify a similarly defined class that encompasses the entire United States. As such, consolidation would conserve judicial resources by permitting one court to preside over and decide pretrial motions (for example, class certification and summary judgment) that are likely to mirror one another substantially. Indeed, avoidance of inconsistent determinations about class certification "presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts." *In re Multidistrict Private Civil Treble Damage Litig. Involving Plumbing Fixtures*, 308 F. Supp. 242, 244 (J.P.M.L. 1970). *See also In re High Sulfur Content Gasoline*

*Prods. Liab. Litig.*, 344 F. Supp. 2d 755, 757 (J.P.M.L. 2004) (transferring five actions in part to "prevent inconsistent pretrial rulings, especially with respect to class certification.").

Because of the similarity of the complaints, transfer of the actions to a single court for pretrial proceedings would ensure that those pretrial motions are decided on a consistent basis. This puts each party on equal footing and prevents the inequitable result of Plaintiffs and Defendants receiving different rulings in different courts, or of Defendants being subjected to inconsistent injunctive relief. *See In re Pfizer Inc. Sec., Derivative & "ERISA" Litig.*, 374 F. Supp. 2d 1348, 1349 (J.P.M.L. 2005) (holding centralization "necessary in order to . . . prevent inconsistent pretrial rulings, especially with respect to questions of class certification").

Finally, absent consolidation, any discovery dispute that may arise would have to be litigated multiple times in multiple forums, with a resulting waste of judicial and party resources to no discernible purpose, and with the very real possibility that courts would resolve the disputes in a manner that imposed conflicting standards upon the parties. *See In re Yamaha Motor Corp. Rhino ATV Prods. Liab. Litig.*, 597 F. Supp. 2d 1377, 1378 (J.P.M.L. 2009) ("Centralization will enable the transferee judge to make consistent rulings on such discovery disputes from a global vantage point."). In short, consolidation of these actions would fulfill the basic goals of §1407, considerably enhance the convenience of all parties, and conserve the resources of the judiciary and of the parties involved in these cases.

## II. The Northern District of Illinois is the Appropriate Forum for These Cases

Defendants respectfully suggest that the Panel transfer the actions (as well as any tag-along complaints) to the United States District Court for the Northern District of Illinois, where one of the actions is currently pending. The Panel has cited to a number of factors for selecting the appropriate district for transfer and consolidation, including: (1) where the evidence, parties

and witnesses are located;[9] (2) the geographical convenience and accessibility of the district to the litigants;[10] (3) the preferences of the parties;[11] (4) whether cases are already pending in a particular district;[12] (5) whether a particular district court judge has already invested significant time in developing familiarity with the issues likely to arise in the consolidated cases;[13] (6) whether a particular action was filed early or has advanced procedurally;[14] (7) relative docket conditions in various districts;[15] and (8) the availability of a court with the experience and resources to handle multidistrict litigation.[16]

Some of the factors are inconclusive here. The cases were all recently filed, and none has advanced procedurally. Thus, no judge has already invested significant time in developing familiarity with the issues involved. The remaining factors, however, favor the Northern District of Illinois.

**A. Location of Evidence, Parties and Witnesses**

The factor of proximity to the evidence, parties and witnesses that will comprise the bulk of the common litigation in these actions heavily favors the Northern District of Illinois. *See In re Potash Antitrust Litig. (No. II)*, 588 F. Supp. 2d 1364 (J.P.M.L. 2008) (consolidating four

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[9] *See In re Potash Antitrust Litig. (No. II)*, 588 F. Supp. 2d 1364 (J.D.M.L. 2008) (transferring to a district where witnesses and documents were likely to be located).

[10] *See, e.g., In re Intel Corp. Microprocessor Antitrust Litig.*, 403 F. Supp. 2d 1356, 1357 (J.P.M.L. 2005) (consolidating ten California actions and four Delaware actions in the District of Delaware because Delaware was a geographically convenient location for the litigants).

[11] *See, e.g., In re Vytorin/Zetia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1378, 1380 (J.P.M.L. 2008) (choosing a forum on the basis of the preferences of several of the parties).

[12] *See In re Publ'n Paper Antitrust Litig.*, 346 F. Supp. 2d 1370, 1372 (J.P.M.L. 2004) (transferring cases to district with the largest number of pending actions).

[13] *See In re Train Derailment Near Tyrone, Okla., On April 21, 2005*, 545 F. Supp. 2d 1373, 1374 (J.P.M.L. 2008) (transferring cases to judge who had "already developed familiarity with the issues involved as a result of presiding over motion practice and other pretrial proceedings for the past two years").

[14] *See In re Edward H. Okun I.R.S. § 1031 Tax Deferred Exch. Litig.*, 609 F. Supp. 2d 1380, 1381–82 (J.P.M.L. 2009) (transferring to the district where earlier filed and "most procedurally advanced" action was pending).

[15] *See In re Packaged Ice Antitrust Litig.*, 560 F. Supp. 2d 1359, 1361 (J.P.M.L. 2008) (transferring to a district with "favorable caseload conditions").

[16] *See In re Publ'n Paper Antitrust Litig.*, 346 F. Supp. 2d at 1372 (choosing a transferee forum with "the resources" to handle a complex multidistrict antitrust docket); *In re Human Tissue Prods. Liab. Litig.*, 435 F. Supp. 2d 1352, 1354 (J.P.M.L. 2006) (transferring cases to "a jurist who has the experience necessary to steer this litigation on a prudent course").

cases in the Northern District of Illinois because "[t]wo defendants are headquartered in that district, and relevant documents and witnesses may be located there"); *In re Pfizer Inc. Sec., Derivative & "ERISA" Litig.*, 374 F. Supp. 2d at 1350 (transferring actions to the district where "Pfizer has its headquarters and many individual defendants reside, and therefore relevant witnesses and documents will likely be found there").

The contacts of the IKO defendants with the state of Illinois and the Northern District of Illinois are manifest:

- A substantial portion of the shingles that are the subject of the actions were manufactured in facilities located in either Chicago, Illinois or Kankakee, Illinois (which is approximately 60 miles from Chicago);
- Since 1989, all customer complaints and warranty claims for shingles sold in the United States are received, processed and handled by a facility located in either Chicago, Illinois or Kankakee, Illinois;
- Since 1997, marketing for IKO shingles sold in the United States, including the distribution of advertising as well as promotional and marketing materials, has been managed by offices located in either Chicago, Illinois or Kankakee, Illinois;
- Since 1983, the chief financial executive for IKO's shingle operations in the United States has been located in either Chicago, Illinois or Kankakee, Illinois;
- The president for IKO's shingle operations in the United States maintained an office in Chicago, Illinois for the period 1981 – 1995.

*See* Declaration of David Koschitzky, contained in Attachment F. These contacts strongly favor consolidation of the actions in the Northern District of Illinois. As these claims focus upon the quality of IKO's roofing shingles and supposed representations made by IKO in connection with the sale and marketing of its shingles, the presence in Chicago or nearby of IKO's customer service, claims processing and marketing operations for the United States will facilitate the effective and efficient administration of these cases. In particular, fewer problems with respect to the availability of witnesses and documents are likely to arise because a substantial portion of

the shingles that form the common focus of these actions were manufactured in Chicago or nearby. In addition, since 1989, IKO's customer service operations have been located in or near Chicago; its product warranty testing activities were conducted in or near Chicago, and its product marketing materials were distributed from or near Chicago. Accordingly, much of the documentary evidence and witnesses will be available in the Northern District of Illinois.

In fact, the Panel recently reached the same conclusion in the *Certainteed* shingle litigation, selecting the Eastern District of Pennsylvania in large part because it "encompasses the headquarters of the common defendant and its business unit responsible for shingle products . . . ." *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 474 F. Supp. 2d at 1358. Given the similarity of the circumstances outlined above to those in *Certainteed*, the Northern District of Illinois makes the most sense for consolidation of these actions.

In contrast, the District of New Jersey—where the IKO Defendants understand the Plaintiffs wish to have these actions consolidated—offers no such benefits. Other than the sale of shingles, IKO has no contacts with New Jersey. It has no manufacturing facilities, customer service operations, marketing offices or corporate facilities in New Jersey. *See* Declaration of David Koschitzky, contained in Attachment F. Neither IKO documents nor witnesses are likely to be found in New Jersey. As such, consolidation of these actions in the District of New Jersey would not promote the convenience of the parties, facilitate the availability of witnesses and evidence, or conserve resources. Nor do any of the other districts in which the remaining actions are pending offer the level of benefits, in terms of accessibility to witnesses and documents, that the Northern District of Illinois does. Other than the sale of shingles, IKO has no operations in New York and, with the sole exception of a small office that closed in the early 1980's, has had no offices there. *Id.* Similarly, while IKO does have a shingle manufacturing facility in Sumas,

Washington and sells shingles in Washington, IKO does not have customer service, warranty processing, or marketing operations in Washington. *Id.* Because such operations are likely to play a significant role in each of the various actions, their absence from Washington weighs strongly against transfer to Washington.

Put simply, the Northern District of Illinois presents the "strong[est] nexus" to the common factual questions and common discovery in this litigation. *In re Publ'n Paper Antitrust Litig.*, 346 F. Supp.2d 1370, 1372 (J.P.M.L. 2004). Transfer to the Northern District of Illinois will facilitate the efficient pretrial administration of these actions.

**B. Convenience and Accessibility**

Second, convenience and accessibility favor the Northern District of Illinois. This Panel has recognized that the Northern District of Illinois, Eastern Division, is located in an easily accessible metropolitan area. *See, e.g., In re Air Crash over Makassar Strait, Sulawesi, Indonesia, on Jan. 1, 2007*, MDL No. 2037, 2009 WL 1740571, at *1 (J.P.M.L. June 17, 2009) (consolidating cases in the Northern District of Illinois because of its "convenience and accessibility" as a "metropolitan district[]").

In addition, the wide geographic dispersion of actions and parties counsels strongly in favor of a centralized location accessible to all parties. *See In re Gadolinium Contrast Dyes Prods. Liab. Litig.*, 536 F. Supp. 2d at 1382 (choosing "a relatively central forum for [the] nationwide litigation"); *In re Multidist. Litig. Involving Butterfield Patent Infringement*, 328 F. Supp. 513, 515 (J.P.M.L. 1970) ("Since Chicago is geographically central, we think the convenience of the parties will best be served by transfer to . . . the Northern District of Illinois.").

As in *Butterfield* and *Gadolinium*, Defendants and Plaintiffs are geographically widespread, and would find Chicago a convenient center of gravity. These actions (and the Plaintiffs and Defendants litigating them) stretch west to the Pacific Ocean and east to the Atlantic. The Northern District of Illinois is far more convenient for Plaintiffs located in Michigan and Washington, than would be any venue on the eastern seaboard. In addition, Defendants' law firm is located in Chicago, as is one of the Plaintiffs' attorneys in the Illinois Action, and the law firm that represents Plaintiffs in each action, Halunen & Associates, is located in Minneapolis, Minnesota and has an office in Chicago. *See In re Air Crash Disaster Near Chicago, Illinois, on May 25, 1979*, 476 F. Supp. 445, 449 (J.P.M.L. 1979) (transferring widely dispersed actions to the centrally located Northern District of Illinois because transfer to either coast "would [have] require[d] transcontinental travel for those attorneys and parties located on one side of the continent who need[ed] or desire[d] to participate in pretrial proceedings conducted at the other.").

**C. Preference of the Parties**

All three Defendants favor the Northern District of Illinois as the appropriate venue. *See In re Vytorin/Zetia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1378, 1380 (J.P.M.L. 2008) (choosing a forum in part because it "enjoy[ed] the support" of numerous parties). Many of the activities that lie at the core of the various actions -- including the manufacture of shingles, claims processing and product marketing -- have been conducted by IKO in or near Chicago. *See* Declaration of David Koschitzky, contained in Attachment F. Defendants thus prefer to litigate pretrial proceedings in Chicago, which is a key location for IKO's activities in the United States.

**D. Experience, Resources and Docket Conditions of Transferee Court**

The Northern District of Illinois possesses the resources to manage a complex multidistrict products liability docket, as well as the capacity to absorb all of the pending and tag-along nationwide actions related to IKO's roofing shingles. *See In re Celexa & Lexapro Prods. Liab. Litig.*, 416 F. Supp. 2d 1361, 1363 (J.P.M.L. 2006) (choosing a forum "sitting in a centrally located district with the capacity to handle" a number of complex products liability cases); *In re Publ'n Paper Antitrust Litig.*, 346 F. Supp. 2d at 1372 (selecting a transferee forum with "the resources that this complex antitrust docket is likely to require").

In addition, the Northern District of Illinois is well versed in multidistrict litigation. *See In re Janus Mutual Funds Inv. Litig.*, 310 F. Supp. 2d 1359, 1361 (J.P.M.L. 2004) ("[W]e have searched for a transferee district with the capacity and experience to steer this litigation on a prudent course."). The Panel has repeatedly recognized that the Northern District of Illinois has significant experience in handling complex multidistrict class action litigation. *See, e.g., In re Air Crash Over Makassar Strait*, 2009 WL 1740571, at *1; *In re Text Messaging Antitrust Litig.*, 588 F. Supp. 2d 1372, 1373 (J.P.M.L. 2008); *In re BP Prods. N. Am., Inc., Antitrust Litig. (No. II)*, 560 F. Supp. 2d 1377, 1379 (J.P.M.L. 2008). In fact, many judges in the Northern District of Illinois have familiarity with MDL proceedings. *See, e.g.*:

- *In re Dairy Farmers of Am., Inc., Cheese Antitrust Litig.*, No. MDL 2031, 2009 WL 1740566 (J.P.M.L. June 15, 2009) (Hibbler, J.);
- *In re Potash Antitrust Litig. (No. II)*, 588 F. Supp. 2d 1364 (Castillo, J.);
- *In re Aon Corp. Wage & Hour Employment Practices Litig.*, 581 F. Supp. 2d 1376 (J.P.M.L. 2008) (Kocoras, J.);
- *In re Aftermarket Filters Antitrust Litig.*, 572 F. Supp. 2d 1373 (J.P.M.L. 2008) (Gettleman, J.);
- *In re McDonald's French Fries Litig.*, 560 F. Supp. 2d 1355 (J.P.M.L. 2008) (Bucklo, J.);
- *In re Air Crash Near Medan, Indonesia, on Sept. 5, 2005*, 544 F. Supp. 2d 1379 (J.P.M.L. 2008) (Grady, J.);

- *In re Aqua Dots Prods. Liab. Litig.*, 545 F. Supp. 2d 1369 (J.P.M.L. 2008) (Coar, J.);
- *In re Tex. Roadhouse Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 542 F. Supp. 2d 1370 (J.P.M.L. 2008) (Norgle, J.);
- *In re RC2 Corp. Toy Lead Paint Prods. Liab. Litig.*, 528 F. Supp. 2d 1374 (J.P.M.L. 2007) (Leinenweber, J.).

Furthermore, the Northern District of Illinois is more efficient than the other districts in terms of moving cases through the docket. According to the Administrative Office of U.S. Courts, the median time interval from suit to disposition for all cases was 6.2 months in the Northern District of Illinois, 7.6 months in the District of New Jersey, 7.1 months in the Western District of Washington, and 11.9 months in the Western District of New York.[17]

Given the experience of the Northern District of Illinois in handling complex multidistrict litigation and its superior resources and efficiency, transfer of the subject actions to the Northern District of Illinois is appropriate.

**E. Pending Cases and Time of Filing**

One of the cases is currently pending in the Northern District of Illinois, a factor that favors consolidation there. Although other actions were filed before the case pending in the Northern District of Illinois, none of the pending actions has advanced at all procedurally or substantively. In fact, the only motions that the judges in any action have considered are unopposed motions for the extension of time to file responsive pleadings and motions to admit *pro hac vice*. Important as well, the New Jersey Action – the forum plaintiffs have indicated they seek to have all of the actions transferred – only names IKO Manufacturing as a defendant. Thus, the New Jersey Action does not have the full complement of named U.S. IKO entities before it.

[17] Administrative Office of the United States Courts, "Table C-5, U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending September 30, 2008," *2008 Annual Report of the Director: Judicial Business of the United States Courts* (U.S. Government Printing Office, 2009), *available at* http://www.uscourts.gov/judbus2008/contents.cfm.

Selecting the forum with the earliest filed case offers an advantage where the judge in that forum has invested more time in the case and has gained more familiarity with the issues than has any other judge. *See, e.g., In re Mentor Corp.*, 588 F. Supp. 2d at 1375 (selecting the forum in which the first-filed action was pending because that action was more procedurally advanced). In the present case, however, because none of the pending actions has taken any procedural or substantive steps, that advantage does not exist and this factor is of little importance.

In sum, a substantial portion of the relevant discovery on the common factual issues in this case will come from the Chicago area, and Chicago is undoubtedly the most convenient and centralized location for the parties as a whole. The balance of the factors of convenience, the location of evidence, the parties' preferences, the transferee court's experience and resources, and the limited procedural development of the actions supports transfer to the Northern District of Illinois.

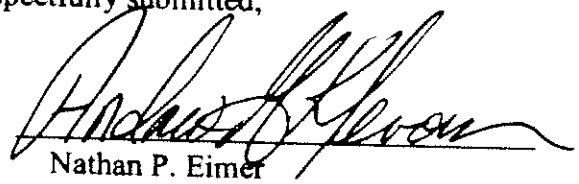
* * *

## CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Panel consolidate the four cases listed in the Schedule of Actions, and all subsequently filed actions related to IKO roofing shingles, for pretrial proceedings, and transfer the actions to the United States District Court for the Northern District of Illinois, Eastern Division.

Dated: August 6, 2009

Respectfully submitted,

By: 

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